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DEC 29 2006

Application No. 10/756,817

REMARKS

Claims 35-54 are pending. New claims 55-60 are added. Claims 36-42, 44-45 and 47-54 were indicated as allowable in the Office Action. Independent claim 43 has been amended to clarify the scope of the inventions defined by this claim. New method claims 55-60 have been added to present the subject matter of the corresponding independent claims 35, 39, 40, 43, 44 and 47 in terms of a preamble directed to a method of providing instrumentation, implants and information for a method for a knee arthroplasty procedure as claimed according to the corresponding independent method claims 35, 39, 40, 43, 44 and 47. No new matter has been added.

Telephonic Interview

The applicant's attorney thanks the Examiner for the courtesy extended during the brief telephonic interview of the above-referenced application on December 28, 2006. The substance of the discussion of the finality of the December 21<sup>st</sup> Office Action, the prior art reference (Bert et al.), the amendments to independent claim 43 and the newly added independent claims 55-60 are reflected in this Amendment and Response.

Final Rejection

The finality of the rejection by the Office Action dated December 21, 2006 is objected to in that an entirely new reference has been used for the first time as the basis for the Section 102 rejection in what is only the second Office Action in this case. In the event that the present amendment and response does not place this case in condition for allowance, is respectfully

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requested that the finality of the rejection of the Office Action dated December 21, 2006 be withdrawn.

### Section 102

Claims 43 and 46 were rejected as being anticipated by Bert et al. This rejection is respectfully traversed.

It is respectfully submitted that a *prima facie* case of anticipation over Bert et al. has not been established. The arcuate surface (121) of the cutting platform (119) in Bert et al. is actually positioned on the front/anterior side of the tibia as part of a classic anterior-posterior oriented resection technique. ("The cutting platform 119 has an arcuate surface 121 adapted to *face and abut the anterior tibial surface on the operative side.*" Bert et al. Col. 10, lines 7-9). Accordingly, the step of positioning the guide "with at least a portion of the slot facing the end of the one of the femur or the tibia from one of a medial aspect or a lateral aspect" as recited in independent claim 43 is not shown in Bert et al.

It is further submitted that, while Fig. 36 of Bert et al. may show an initial position of the surgical saw 144 as being obliquely oriented, there is simply no discussion in Bert et al. of how the cutting tool is to be moved. The entire disclosure of how the surgical saw 144 is moved is recited in the following passage:

"At this point, the instrumentation is ready for the horizontal tibial cut to be made.

Since, in the example described, the medial tibial compartment is being prepared, *the cut is made by inserting a surgical saw 144 through the guide slot 124 of the cutting platform 119.*" (Bert et al. Col. 14, lines 23-27)

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Because the guide slot 124 in Bert et al. faces and abuts the anterior tibial surface, movement of the surgical saw *through* the guide slot 124 will result in an anterior to posterior movement of the cutting tool. As such, Bert et al. does not teach or suggest the step in independent claim 43 of "cutting the end of the one of the femur or the tibia by moving the long axis of the cutting tool in at least one of a medial to lateral direction or a lateral to medial direction to create at least a portion of at least one resected surface."

The amendments to independent claim 43 clarify the intended and inherent scope of this claim as being directed to a medial to lateral or lateral to medial approach in contrast to the convention anterior to posterior approach taught by Bert et al.

#### Conclusion

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is requested to telephone the undersigned to arrange for a telephonic interview before any further prosecution of this case.

Respectfully submitted,



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